

Calendar No. 302

107TH CONGRESS
1ST SESSION

S. 950

[Report No. 107-131]

To amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2001

Mr. SMITH of New Hampshire (for himself, Mr. REID, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. CHAFEE, Mr. CORZINE, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

DECEMBER 20 (legislative day, DECEMBER 18), 2001

Reported by Mr. JEFFORDS, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Reformulated
5 Fuels Act of 2001”.

1 **SEC. 2. LEAKING UNDERGROUND STORAGE TANKS.**

2 (a) USE OF LUST FUNDS FOR REMEDIATION OF
3 MTBE CONTAMINATION.—Section 9003(h) of the Solid
4 Waste Disposal Act (42 U.S.C. 6991b(h)) is amended—

5 (1) in paragraph (7)(A)—

6 (A) by striking “paragraphs (1) and (2) of
7 this subsection” and inserting “paragraphs (1),
8 (2), and (12)”; and

9 (B) by inserting “and section ~~9010(a)~~
10 *9010*” before “if”; and

11 (2) by adding at the end the following:

12 “(12) REMEDIATION OF MTBE CONTAMINA-
13 TION.—

14 “(A) IN GENERAL.—The Administrator
15 and the States may use funds made available
16 under section 9011(1) to carry out corrective
17 actions with respect to a release of methyl ter-
18 tiary butyl ether that presents a threat to
19 human health, welfare, or the environment.

20 “(B) APPLICABLE AUTHORITY.—Subpara-
21 graph (A) shall be carried out—

22 “(i) in accordance with paragraph (2);

23 and

24 “(ii) in the case of a State, in accord-
25 ance with a cooperative agreement entered

1 into by the Administrator and the State
2 under paragraph (7).”.

3 (b) **RELEASE PREVENTION AND COMPLIANCE.**—Sub-
4 title I of the Solid Waste Disposal Act (42 U.S.C. 6991
5 et seq.) is amended by striking section 9010 and inserting
6 the following:

7 **“SEC. 9010. RELEASE PREVENTION AND COMPLIANCE.**

8 “Funds made available under section 9011(2) from
9 the Leaking Underground Storage Tank Trust Fund may
10 be used for conducting inspections, or for issuing orders
11 or bringing actions under this subtitle—

12 “(1) by a State (pursuant to section
13 9003(h)(7)) acting under—

14 “(A) a program approved under section
15 9004; or

16 “(B) State requirements regulating under-
17 ground storage tanks that are similar or iden-
18 tical to this subtitle; and

19 “(2) by the Administrator, acting under this
20 subtitle or a State program approved under section
21 9004.

22 **“SEC. 9011. AUTHORIZATION OF APPROPRIATIONS.**

23 “In addition to amounts made available under section
24 2007(f), there are authorized to be appropriated from the
25 Leaking Underground Storage Tank Trust Fund—

1 “(1) to carry out section 9003(h)(12),
2 \$200,000,000 for fiscal year 2002, to remain avail-
3 able until expended; and

4 “(2) to carry out section 9010—

5 “(A) \$50,000,000 for fiscal year 2002; and

6 “(B) \$30,000,000 for each of fiscal years
7 2003 through 2007.”.

8 (c) TECHNICAL AMENDMENTS.—

9 (1) Section 1001 of the Solid Waste Disposal
10 Act (42 U.S.C. prec. 6901) is amended by striking
11 the item relating to section 9010 and inserting the
12 following:

“Sec. 9010. Release prevention and compliance.

“Sec. 9011. Authorization of appropriations.”.

13 (2) Section 9001(3)(A) of the Solid Waste Dis-
14 posal Act (42 U.S.C. 6991(3)(A)) is amended by
15 striking “sustances” and inserting “substances”.

16 (3) Section 9003(f)(1) of the Solid Waste Dis-
17 posal Act (42 U.S.C. 6991b(f)(1)) is amended by
18 striking “subsection (c) and (d) of this section” and
19 inserting “subsections (c) and (d)”.

20 (4) Section 9004(a) of the Solid Waste Disposal
21 Act (42 U.S.C. 6991e(a)) is amended in the second
22 sentence by striking “referred to” and all that fol-
23 lows and inserting “referred to in subparagraph (A)
24 or (B), or both, of section 9001(2).”.

1 (5) Section 9005 of the Solid Waste Disposal
2 Act (42 U.S.C. 6991d) is amended—

3 (A) in subsection (a), by striking “study
4 taking” and inserting “study, taking”;

5 (B) in subsection (b)(1), by striking
6 “relevent” and inserting “relevant”; and

7 (C) in subsection (b)(4), by striking
8 “Evironmental” and inserting “Environ-
9 mental”.

10 **SEC. 3. AUTHORITY FOR WATER QUALITY PROTECTION**
11 **FROM FUELS.**

12 (a) IN GENERAL.—Section 211(c) of the Clean Air
13 Act (42 U.S.C. 7545(c)) is amended—

14 (1) in paragraph (1)(A)—

15 (A) by inserting “fuel or fuel additive or”
16 after “Administrator any”; and

17 (B) by striking “air pollution which” and
18 inserting “air pollution, or water pollution,
19 that”;

20 (2) in paragraph (4)(B), by inserting “or water
21 quality protection,” after “emission control,”; and

22 (3) by adding at the end the following:

23 “(5) BAN ON THE USE OF MTBE.—Not later
24 than 4 years after the date of enactment of this

1 paragraph, the Administrator shall ban use of meth-
 2 yl tertiary butyl ether in motor vehicle fuel.”.

3 (b) NO EFFECT ON LAW REGARDING STATE AU-
 4 THORITY.—The amendments made by subsection (a) have
 5 no effect on the law in effect on the day before the date
 6 of enactment of this Act regarding the authority of States
 7 to limit the use of methyl tertiary butyl ether in gasoline.

8 **SEC. 4. WAIVER OF OXYGEN CONTENT REQUIREMENT FOR**
 9 **REFORMULATED GASOLINE.**

10 Section 211(k)(1) of the Clean Air Act (42 U.S.C.
 11 7545(k)(1)) is amended—

12 (1) by striking “Within 1 year after the enact-
 13 ment of the Clean Air Act Amendments of 1990,”
 14 and inserting the following:

15 “(A) IN GENERAL.—Not later than No-
 16 vember 15, 1991,”; and

17 (2) by adding at the end the following:

18 “(B) WAIVER OF OXYGEN CONTENT RE-
 19 QUIREMENT.—

20 “(i) AUTHORITY OF THE GOV-
 21 ERNOR.—

22 “(I) IN GENERAL.—Notwith-
 23 standing any other provision of this
 24 subsection, a Governor of a State,
 25 upon notification by the Governor to

1 the Administrator during the 90-day
2 period beginning on the date of enact-
3 ment of this subparagraph, or during
4 the 90-day period beginning on the
5 date on which an area in the State be-
6 comes a covered area by operation of
7 the second sentence of paragraph
8 ~~(11)(D)~~ (10)(D), may waive the appli-
9 cation of paragraphs (2)(B) and
10 (3)(A)(v) to gasoline sold or dispensed
11 in the State.

12 “(II) OPT-IN AREAS.—A Gov-
13 ernor of a State that submits an ap-
14 plication under paragraph (6) may, as
15 part of that application, waive the ap-
16 plication of paragraphs (2)(B) and
17 (3)(A)(v) to gasoline sold or dispensed
18 in the State.

19 “(ii) TREATMENT AS REFORMULATED
20 GASOLINE.—In the case of a State for
21 which the Governor invokes the waiver de-
22 scribed in clause (i), gasoline that complies
23 with all provisions of this subsection other
24 than paragraphs (2)(B) and (3)(A)(v) shall

1 be considered to be reformulated gasoline
 2 for the purposes of this subsection.

3 “(iii) EFFECTIVE DATE OF WAIVER.—
 4 A waiver under clause (i) shall take effect
 5 on the earlier of—

6 “(I) the date on which the per-
 7 formance standards under subpara-
 8 graph (C) take effect; or

9 “(II) the date that is 270 days
 10 after the date of enactment of this
 11 subparagraph.

12 “(C) MAINTENANCE OF TOXIC AIR POL-
 13 LUTANT EMISSION REDUCTIONS.—

14 “(i) IN GENERAL.—As soon as prac-
 15 ticable after the date of enactment of this
 16 subparagraph, the Administrator shall—

17 “(I) promulgate regulations con-
 18 sistent with subparagraph (A) and
 19 paragraph (3)(B)(ii) to ensure that
 20 reductions of toxic air pollutant emis-
 21 sions achieved under the reformulated
 22 gasoline program under this section
 23 before the date of enactment of this
 24 subparagraph are maintained in
 25 States for which the Governor waives

1 the oxygenate requirement under sub-
2 paragraph (B)(i); or

3 “(II) determine that the require-
4 ment described in clause (iv)—

5 “(aa) is consistent with the
6 bases for performance standards
7 described in clause (ii); and

8 “(bb) shall be deemed to be
9 the performance standards under
10 clause (ii) and shall be applied in
11 accordance with clause (iii).

12 “(ii) PADD PERFORMANCE STAND-
13 ARDS.—The Administrator, in regulations
14 promulgated under clause (i)(I), shall es-
15 tablish annual average performance stand-
16 ards for each Petroleum Administration for
17 Defense District (referred to in this sub-
18 paragraph as a ‘PADD’) based on—

19 “(I) the average of the annual
20 aggregate reductions in emissions of
21 toxic air pollutants achieved under the
22 reformulated gasoline program in each
23 PADD during calendar years 1999
24 and 2000, determined on the basis of
25 the 1999 and 2000 Reformulated

1 Gasoline Survey Data, as collected by
2 the Administrator; and

3 “(II) such other information as
4 the Administrator determines to be
5 appropriate.

6 “(iii) APPLICABILITY.—

7 “(I) IN GENERAL.—The perform-
8 ance standards under this subpara-
9 graph shall be applied on an annual
10 average importer or refinery-by-refin-
11 ery basis to reformulated gasoline that
12 is sold or introduced into commerce in
13 a State for which the Governor waives
14 the oxygenate requirement under sub-
15 paragraph (B)(i).

16 “(II) MORE STRINGENT RE-
17 QUIREMENTS.—The performance
18 standards under this subparagraph
19 shall not apply to the extent that any
20 requirement under section 202(l) is
21 more stringent than the performance
22 standards.

23 “(III) STATE STANDARDS.—The
24 performance standards under this
25 subparagraph shall not apply in any

1 State that has received a waiver under
2 section 209(b).

3 “(IV) CREDIT PROGRAM.—The
4 Administrator shall provide for the
5 granting of credits for exceeding the
6 performance standards under this
7 subparagraph in the same manner as
8 provided in paragraph (7).

9 “(iv) STATUTORY PERFORMANCE
10 STANDARDS.—

11 “(I) IN GENERAL.—Subject to
12 subclause (IV), if the regulations
13 under clause (i)(I) have not been pro-
14 mulgated by the date that is 270 days
15 after the date of enactment of this
16 subparagraph, the requirement de-
17 scribed in subclause (III) shall be
18 deemed to be the performance stand-
19 ards under clause (ii) and shall be ap-
20 plied in accordance with clause (iii).

21 “(II) PUBLICATION IN FEDERAL
22 REGISTER.—Not later than 30 days
23 after the date of enactment of this
24 subparagraph, the Administrator shall
25 publish in the Federal Register, for

1 each PADD, the percentage equal to
2 the average of the annual aggregate
3 reductions in the PADD described in
4 clause (ii)(I).

5 “(III) TOXIC AIR POLLUTANT
6 EMISSIONS.—The annual aggregate
7 emissions of toxic air pollutants from
8 baseline vehicles when using reformu-
9 lated gasoline in each PADD shall be
10 not greater than—

11 “(aa) the aggregate emis-
12 sions of toxic air pollutants from
13 baseline vehicles when using
14 baseline gasoline in the PADD;
15 reduced by

16 “(bb) the quantity obtained
17 by multiplying the aggregate
18 emissions described in item (aa)
19 for the PADD by the percentage
20 published under subclause (II)
21 for the PADD.

22 “(IV) SUBSEQUENT REGULA-
23 TIONS.—Through promulgation of
24 regulations under clause (i)(I), the
25 Administrator may modify the per-

1 performance standards established under
 2 subclause (I) to require each PADD
 3 to achieve a greater percentage reduc-
 4 tion than the percentage published
 5 under subclause (II) for the PADD.”.

6 **SEC. 5. PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS**
 7 **OF FUELS AND FUEL ADDITIVES.**

8 Section 211(b) of the Clean Air Act (42 U.S.C.
 9 7545(b)) is amended—

10 (1) in paragraph (2)—

11 (A) by striking “may also” and inserting
 12 “shall, on a regular basis,”; and

13 (B) by striking subparagraph (A) and in-
 14 serting the following:

15 “(A) to conduct tests to determine poten-
 16 tial public health and environmental effects of
 17 the fuel or additive (including carcinogenic,
 18 teratogenic, or mutagenic effects); and”;

19 (2) by adding at the end the following:

20 “(4) ETHYL TERTIARY BUTYL ETHER.—

21 “(A) IN GENERAL.—Not later than 2 years
 22 after the date of enactment of this paragraph,
 23 the Administrator shall—

24 “(i) conduct a study on the effects on
 25 public health, air quality, and water re-

1 sources of increased use of, and the feasi-
 2 bility of using as substitutes for methyl
 3 tertiary butyl ether in gasoline—

4 “(I) ethyl tertiary butyl ether;
 5 and

6 “(II) other ethers, as determined
 7 by the Administrator; and

8 “(ii) submit to the Committee on En-
 9 ergy and Commerce of the House of Rep-
 10 resentatives and the Committee on Envi-
 11 ronment and Public Works of the Senate a
 12 report describing the results of the study.

13 “(B) CONTRACTS FOR STUDY.—In car-
 14 rying out this paragraph, the Administrator
 15 may enter into 1 or more contracts with non-
 16 governmental entities.”.

17 **SEC. 6. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

18 Section 211 of the Clean Air Act (42 U.S.C. 7545)
 19 is amended—

20 (1) by redesignating subsection (o) as sub-
 21 section (p); and

22 (2) by inserting after subsection (n) the fol-
 23 lowing:

24 “(o) ANALYSES OF MOTOR VEHICLE FUEL CHANGES
 25 AND EMISSIONS MODEL.—

1 “(1) ANTI-BACKSLIDING ANALYSIS.—

2 “(A) DRAFT ANALYSIS.—Not later than 4
3 years after the date of enactment of this sub-
4 section, the Administrator shall publish for pub-
5 lic comment a draft analysis of the changes in
6 emissions of air pollutants and air quality due
7 to the use of motor vehicle fuel and fuel addi-
8 tives resulting from implementation of the
9 amendments made by the Federal Reformulated
10 Fuels Act of 2001.

11 “(B) FINAL ANALYSIS.—After providing a
12 reasonable opportunity for comment but not
13 later than 5 years after the date of enactment
14 of this subsection, the Administrator shall pub-
15 lish the analysis in final form.

16 “(2) EMISSIONS MODEL.—For the purposes of
17 this subsection, as soon as the necessary data are
18 available, the Administrator shall develop and final-
19 ize an emissions model that reasonably reflects the
20 effects of fuel characteristics or components on emis-
21 sions from vehicles in the motor vehicle fleet during
22 calendar year 2005.”.

23 **SEC. 7. ELIMINATION OF ETHANOL WAIVER.**

24 Section 211(h) of the Clean Air Act (42 U.S.C.
25 7545(h)) is amended—

1 (1) by striking paragraph (4); and

2 (2) by redesignating paragraph (5) as para-
3 graph (4).

4 **SEC. 8. ADDITIONAL OPT-IN AREAS UNDER REFORMU-**
5 **LATED GASOLINE PROGRAM.**

6 Section 211(k)(6) of the Clean Air Act (42 U.S.C.
7 7545(k)(6)) is amended—

8 (1) by striking “(6) OPT-IN AREAS.—(A)
9 Upon” and inserting the following:

10 “(6) OPT-IN AREAS.—

11 “(A) CLASSIFIED AREAS.—

12 “(i) IN GENERAL.—Upon”;

13 (2) in subparagraph (B), by striking “(B) If”
14 and inserting the following:

15 “(ii) EFFECT OF INSUFFICIENT DO-
16 MESTIC CAPACITY TO PRODUCE REFORMU-
17 LATED GASOLINE.—If”;

18 (3) in subparagraph (A)(ii) (as so redesign-
19 nated)—

20 (A) in the first sentence, by striking “sub-
21 paragraph (A)” and inserting “clause (i)”; and

22 (B) in the second sentence, by striking
23 “this paragraph” and inserting “this subpara-
24 graph”; and

25 (4) by adding at the end the following:

1 “(B) NONCLASSIFIED AREAS.—

2 “(i) IN GENERAL.—In accordance
3 with section 110, a State may submit to
4 the Administrator, and the Administrator
5 may approve, a State implementation plan
6 revision that provides for application of the
7 prohibition specified in paragraph (5) in
8 any portion of the State that is not a cov-
9 ered area or an area referred to in sub-
10 paragraph (A)(i).

11 “(ii) PERIOD OF EFFECTIVENESS.—
12 Under clause (i), the State implementation
13 plan shall establish a period of effective-
14 ness for applying the prohibition specified
15 in paragraph (5) to a portion of a State
16 that—

17 “(I) commences not later than 1
18 year after the date of approval by the
19 Administrator of the State implemen-
20 tation plan; and

21 “(II) ends not earlier than 4
22 years after the date of commencement
23 under subclause (I).”.

1 **SEC. 9. MTBE MERCHANT PRODUCER CONVERSION ASSIST-**
2 **ANCE.**

3 Section 211(c) of the Clean Air Act (42 U.S.C.
4 7545(c)) (as amended by section 3(a)(3)) is amended by
5 adding at the end the following:

6 “(6) MTBE MERCHANT PRODUCER CONVER-
7 SION ASSISTANCE.—

8 “(A) IN GENERAL.—The Administrator
9 may make grants to merchant producers of
10 methyl tertiary butyl ether in the United States
11 to assist the producers in the conversion of eli-
12 gible production facilities described in subpara-
13 graph (B) to the production of other fuel addi-
14 tives that—

15 “(i) will be consumed in nonattain-
16 ment areas;

17 “(ii) will assist the nonattainment
18 areas in achieving attainment with a na-
19 tional primary ambient air quality stand-
20 ard;

21 “(iii) will not degrade air quality or
22 surface or ground water quality or re-
23 sources; and

24 “(iv) have been registered and tested
25 in accordance with the requirements of this
26 section.

1 “(B) ELIGIBLE PRODUCTION FACILI-
2 TIES.—A production facility shall be eligible to
3 receive a grant under this paragraph if the pro-
4 duction facility—

5 “(i) is located in the United States;
6 and

7 “(ii) produced methyl tertiary butyl
8 ether for consumption in nonattainment
9 areas during the period—

10 “(I) beginning on the date of en-
11 actment of this paragraph; and

12 “(II) ending on the effective date
13 of the ban on the use of methyl ter-
14 tiary butyl ether under paragraph (5).

15 “(C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There is authorized to be appropriated
17 to carry out this paragraph \$250,000,000 for
18 each of fiscal years 2002 through 2004.”.

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